

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

THE PROFESSIONAL POLICEMEN'S PROTECTIVE
ASSOCIATION OF MILWAUKEE, WISCONSIN

Case LXXXV
No. 13067 DR-7
Decision No. 9429

For A Declaratory Ruling Involving
Certain Employees of the

CITY OF MILWAUKEE, WISCONSIN

Appearances:

Petrie, Stocking, Neixner & Zeisig, Attorneys at Law, by Mr.
John J. Romahn, appearing on behalf of the Petitioner.
Mr. John J. Fleming, City Attorney, by Mr. Nicholas M. Sigel,
Assistant City Attorney, appearing on behalf of the
Respondent.

DECLARATORY RULING

The Professional Policemen's Protective Association of Milwaukee, Wisconsin, having filed a petition requesting a Declaratory Ruling on whether the Rules and Regulations of the Police Department of the City of Milwaukee are, and should be, considered as bearing upon wages, hours and working conditions of certain law enforcement individuals in its employ, who are governed and regulated by said Rules and Regulations, so as to permit the Petitioner to petition the City of Milwaukee for changes or improvements in such Rules and Regulations under the pertinent provision of Section 111.70 of the Wisconsin Statutes; and hearing on such petition having been conducted by the Commission on October 13, 1969, at Milwaukee, Wisconsin, the full Commission being present, and the Commission, being fully advised in the premises, having considered the evidence, motions and arguments of Counsel, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1 That the Professional Policemen's Protective Association of Milwaukee, Wisconsin, hereinafter referred to as the Petitioner, is the certified, exclusive bargaining representative of the Police Patrolmen and Police Sergeants of the Police Department of the City of Milwaukee, and maintains an office at 1010 North 3rd Street in the City of Milwaukee, Wisconsin, and has a mailing address of P. O. Box 738, Milwaukee, Wisconsin 53201.

No. 9429

2. That the City of Milwaukee, hereinafter referred to as the Municipal Employer, has its principal offices at 200 East Wells Street, Milwaukee, Wisconsin 53202.

3. That the Municipal Employer has permitted the Chief of Police of the City of Milwaukee Police Department to draft and publish Rules and Regulations which govern and control all activities of the members of the said Police Department, both during duty hours and off-duty hours; and that the sole authority for the enactment or amendment of such Rules and Regulations is vested by the Municipal Employer in the office of the Chief of Police of the Milwaukee Police Department.

4. That the said Rules and Regulations are compiled in a Book of Rules and Regulations, which Book of Rules and Regulations is furnished and issued to the employe members of the said Police Department at the time of their entry on duty with the Police Department; and that the said Book of Rules and Regulations is designated and denominated by the Chief of Police as being a part of the official business of the said Police Department; and that the individual members of the Police Department are thereby ordered and directed that not to divulge or discuss the contents of the said Book of Rules and Regulations with anyone who is not a member of the said Police Department.

5. That the said Rules and Regulations of said Police Department, in addition to prescribing work rules for the said Police Department, control and have a direct bearing on the wages, hours and working conditions of the said employe members of said Police Department.

6. That the Petitioner has in the past attempted to enter into negotiations with the Municipal Employer with respect to those portions of the said Rules and Regulations which bear upon ~~work~~ hours and working conditions pursuant to the provisions of Section 111.70, Wisconsin Statutes, but the representatives of the Municipal Employer have consistently refused to recognize any such demands to discuss or negotiate with the Petitioner, and have based their refusal upon the fact that the sole authority to draft, modify or amend the said Rules and Regulations is vested in the Chief of Police.

7. That the Petitioner, and the individual members and employes of the said Police Department represented by the Petitioner, are prohibited by the said Rules and Regulations from making disclosures of the specific Rules and Regulations bearing upon wages, hours and working conditions for inclusion in this petition under penalty of disciplinary action as set forth and prescribed by the very same Rules and Regulations; and would subject themselves to disciplinary penalties prescribed and imposed by the very same Rules and Regulations for making such disclosures.

8. That the restrictions placed upon the employees within the bargaining unit represented by the Petitioner which prohibit discussion or release of the contents of the said Book of Rules and Regulations with non-police persons places an unreasonable restraint upon the petitioner to negotiate with the Municipal Employer with respect to wages, hours and working conditions of the employees included in the bargaining unit represented by the Petitioner.

Upon the basis of the above and foregoing Findings of Fact the Commission makes the following

CONCLUSION OF LAW

That those provisions of the Rules and Regulations, which have been enacted by the Chief of Police of the Milwaukee Police Department, which relate to wages, hours and working conditions of Police Patrolmen and Police Sergeants in the employ of the Milwaukee Police Department, are a proper subject of negotiations by and between the Professional Policemen's Protective Association of Milwaukee, Wisconsin, and the City of Milwaukee, within the meaning of Section 111.70(4)(j), and Section 111.70(4)(e) through (g) of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

DECLARATORY RULING

That the Professional Policemen's Protective Association of Milwaukee, Wisconsin, may petition the City of Milwaukee for changes or improvements in those Rules and Regulations of the Police Department of the City of Milwaukee which bear upon wages, hours and/or working conditions of Police Patrolmen and Police Sergeants in the employ of the Police Department of the City of Milwaukee.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of January, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Meritt Slayney
Meritt Slayney, Chairman

Zel S. Rice
Zel S. Rice, Commissioner

William R. Wilberg
William R. Wilberg, Commissioner

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Mr. John J. Romann, appearing on behalf of the Petitioner.
Mr. John J. Fleming, City Attorney, by Mr. Nicholas M. Sigel,
Assistant City Attorney, appearing on behalf of the
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MEMORANDUM ACCOMPANYING DECLARATORY RULING

Following the filing of the Petition for Declaratory Ruling by the Professional Policemen's Protective Association of Milwaukee, Wisconsin, hereinafter referred to as the Association; the City of Milwaukee, hereinafter referred to as the City, filed a counter petition, wherein it moved that the Commission dismiss the Association's petition and wherein it alleged as follows:

"1. Charter Ordinance 29.22 of the Milwaukee City Charter, grants the Chief of Police the power to regulate his department and prescribe rules for the government of its members. This Charter Ordinance is Sec. 23, Chapter 586, Laws of Wisconsin, 1911.

2. Sec. 66.01 (15), Wis. Stats., directs that Chapter 586, Laws of Wisconsin, 1911, be constituted as an enactment of statewide concern for the purpose of providing a uniform regulation of police and fire departments.

3. The employer denies that it has permitted the Chief of Police to draft and publish rules and regulations as alleged in paragraph 3 in the petition of the PPPA, and alleges that the Chief of Police has this authority by virtue of the Laws of the State of Wisconsin."

During the course of the hearing in the matter, the City challenged the jurisdiction of the Commission to consider the petition filed by the Association since it did not contain the verified signature of the Petitioner or of the person signing on behalf of the Petitioner, in accordance with Sec. 227.06(2)(c) of the Wisconsin Statutes. At this point in the hearing the Association submitted a verification signed by its Counsel, which signature was properly acknowledged.

In addition, the City contended that under the pertinent provisions of Chapter 586, Laws of Wisconsin, 1911, the Common Council of the City cannot negotiate the duties of the Chief of Police of the City of Milwaukee.

The Association opposes this view and, in effect, argued that the Chief of Police cannot abrogate or deny the right of police officers to file demands and to attempt to negotiate changes affecting their wages, hours and working conditions and therefore that the rules and regulations involved as they affect the wages, hours and working conditions, prevent members of the Association from discussing with the bargaining representative of the City such rules and regulations without the threat of internal discipline by the Chief of Police.

Following the closing of the hearing, and on October 20, 1969 the City, by the City Attorney, filed a motion requesting withdrawal, without prejudice, of its counter petition and in the letter accompanying said motion the City Attorney stated as follows:

- "We hereby notify your Honorable Commission that after considering Section 227.06(1) of the Wisconsin Statutes, which grants discretion in this instance to your Commission to accept the petition for declaratory ruling and which Section requires said petition to contain 'a concise statement of facts describing the situation as to which the declaratory ruling is requested' (Section 227.06(2)(b)), it appears unnecessary and further not provided for that the City of Milwaukee be required to add by way of evidence or by way of admissions through counsel, and we, therefore, make no admissions or denials and offer no evidence. We do take the position that the argument presented by this writer in support of its motion to dismiss the petition be also considered by the Commission in making its determination regarding the declaratory ruling sought.

We also attach hereto the motion of the City of Milwaukee withdrawing the counter petition for the following reasons: the filing of the counter petition is not provided for in Section 227.06 of the Wisconsin Statutes, and the City of Milwaukee seeks no declaratory ruling, and does not wish to create an issue as to the allegations set forth in the petition of the PPPA filed October 22, 1969, with the WERC.

It is the City of Milwaukee's position that the opportunity for hearing to be afforded to interested parties as referred to in Section 227.06(1) has been fully complied with by virtue of the hearing held on October 13, 1969. We make this statement only as it applies to the City of Milwaukee as an interested party."

Since the City does not deny the facts alleged in the petition filed by the Association we deem such facts to exist.

Section 23, Chapter 586 of the Session Laws of Wisconsin, 1911 provides as follows:

"The Chief Engineer of the Fire Department and the Chief of Police of said city shall be the heads of their respective departments, and shall have power to regulate said departments, and prescribe rules for the government of its members. The Chief of Police shall cause the public peace to be preserved and see that all laws and ordinances of the city are enforced. He shall be responsible for the efficiency and general good conduct of the department under his control. Each of said chiefs shall have the custody and control of all public property pertaining to said departments and everything connected therewith and belonging thereto. They shall have the custody and control of all books, records, machines, tools, implements and apparatus of every kind whatsoever necessary in use in each of said departments."

Section 111.70(4)(j) and Sections 111.70(4)(e), (f) and (g) of the Wisconsin Statutes apply to municipal governing bodies, including their agents, which, in the instant matter, includes the Chief of Police of the City of Milwaukee. Sec. 111.70 was enacted after Sec. 23, Chapter 586 of the Session Laws of 1911, and is presumed to have been enacted with a full knowledge of pre-existing statutes.^{1/} Construction of statutes should be done in a way which harmonizes the whole system of law of which they are a part, and any conflict should be reconciled if possible.^{2/}

The pertinent sections of Sec. 111.70, cited above and Sec. 23, Chapter 586 of the Session Laws of 1911 are not necessarily in conflict. They can all be given effect by construing them together and concluding that those rules established by the Chief of Police for the regulation of his department and for the government of the police officers therein, which affect the wages, hours and working conditions of such officers, are proper subjects of negotiation between the representative of such officers and the City of Milwaukee, regardless whether said rules and regulations were promulgated by the Chief of Police, since the latter is an agent of the City of Milwaukee.

Dated at the City of Madison, Wisconsin, this 7th day of January, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman
Ed S. Rice II
Ed S. Rice II, Commissioner
William R. Wilberg
William R. Wilberg, Commissioner

- 1/ Muskego-Norway Consolidated Schools, et al, 35 Wis. (2d) 540
Town of Madison v. City of Madison, 265 Wis. 609
2/ Muskego-Norway Consolidated Schools, et al, 35 Wis. (2d) 540
Moran v. Quality Aluminum Casting Co., 34 Wis. (2d) 542